

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4282 of 1983

Date of decision: 6-9-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMJIBHAI SHANKERBHAI PARMAR

Versus

DANG JILLA PANCHAYAT

Appearance:

Mr. Kaushal Thakkar for Petitioner
None present for respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/09/96

ORAL JUDGEMENT

Heard the learned counsel for the petitioner.

Challenge is made by the petitioner to the order annexure-D dated 16-8-1983 made by the respondent under which the services of the petitioner were terminated. The services of the petitioner were terminated on the ground that he has not cleared the selection through the District Panchayat Service Selection Board, which was one of the conditions of his appointment. The second ground given is that the petitioner does not possess the eligibility for appointment to the post of Leprosy Assistant. The petitioner was appointed on temporary basis on 3-8-1977 and that order has been produced by the respondent at annexure-B to the affidavit-in-reply. That was a temporary appointment subject to the condition of the petitioner passing through the selection by the District Panchayat Service Selection Board.

2. The appointment order of the petitioner contains two conditions, namely, that it is purely a temporary appointment and the petitioner has to satisfy the requirement of Panchayat Service Recruitment Rules. On the date of the advertisement of the post, i.e. on 10th July, 1979, for making temporary appointment, the age of the petitioner was 36 years 4 months. The petitioner is a Scheduled Caste and after giving relaxation of five years, his age was more than six years over and above the age limit prescribed. It is not in dispute that on the date of his appointment petitioner was overaged. In view of this fact the petitioner's appointment itself was illegal and he could not have been allowed to continue on the post of leprosy assistant.

3. The Secretary of the Gujarat Panchayat Service Selection Board, Ahmedabad, addressed letter dated 3-9-1981 to the Secretary, Department of Panchayat, Housing and Urban Development, Gandhinagar, in which it was made clear that the petitioner was irregularly working on the post of leprosy assistant and his age on the date of recruitment was more by 9 years and 10 months than the prescribed age limit of 25 years plus the concession given to Scheduled Castes; and that he did not take training in leprosy work from a recognised institution. The Secretary, Gujarat Panchayat Service Selection Board, Ahmedabad, sent letter dated 14th October, 1982 to the District Development Officer concerned intimating that since the petitioner did not possess the requisite educational and technical qualification and was also overaged as per Gujarat Panchayat Services (Classification and Recruitment) Rules, 1977, his post has been advertised for new recruitment vide advertisement No.12/80/81 dated 7-3-1981 and since new candidates were selected appointment of the

petitioner was liable to be cancelled. The Development Commissioner, Gujarat State, Gandhinagar, vide letter dated 2-7-1983 intimated that the petitioner's services were purely temporary and cannot be regularised on the post of leprosy assistant.

4. Under letter dated 10-8-1983 the petitioner was informed of the fact that because he was overaged and lacked the educational and technical qualification his posting as leprosy assistant could not be regularised. I do not consider it to be proper to go on the issue which has been raised by the learned counsel for the petitioner that the provision regarding qualification has been amended after appointment of the petitioner on temporary basis and it cannot be applied retrospectively. Not only that the applications were invited for regular appointment on the day on which the petitioner was appointed on temporary basis initially. The termination of services of the petitioner made in the present case does not suffer from infirmity. His appointment was temporary appointment subject to the recommendation of the Selection Board which could have been only possible when the petitioner was otherwise eligible. As stated earlier, the petitioner, leaving apart other questions, does not fulfil the age eligibility. Termination of the services of the petitioner was sought to be made on the ground that regularly selected candidates are likely to be made available and he is not eligible for appointment. Termination of service on this ground is not in any way illegal or arbitrary. Condition for regularisation of the services of the petitioner could not be fulfilled by him as he was agebarred. Consequent action would have been and should have been to terminate him from service.

5. The petitioner was appointed on temporary basis and he does not become permanent unless he acquires that capacity by force of any rule or he is declared as permanent servant. Reference in this respect may have to be made to the decision of the Supreme Court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. vs. Devendra Kumar Jain, JT 1995 (1) SC 198. In the case of termination of services of a temporary appointee the principles of natural justice are not required to be followed and the reason is obvious. The petitioner has no lien on the post, nor has he acquired any right to continue on the post. Initial appointment of the petitioner itself was bad or illegal, and if he continues in the service for some time or some years he cannot be given the benefit of the same. The petitioner should have legal or fundamental right to continue on the post which is not there in this case. However long the

petitioner would have continued to work, it will not culminate in a substantive, regular and permanent appointment. It is an illegal appointment and it remains as such for all the years. If the contention of the counsel for the petitioner is accepted and the order of termination of service of the petitioner is set aside, then this court will be restoring the illegal appointment which this court will not do sitting under Article 226 of the Constitution of India. The counsel for the petitioner is unable to point out any provision from the relevant service rules which empowers the authority to relax the age in a case where the petitioner was age barred on the date of his appointment itself and to regularise his service. The Government has rightly decided not to regularise the services of the petitioner and if the court grants the relief then it will be perpetuating the illegality which ordinarily this court will not allow. It is a settled proposition of law that this court will decline to issue a writ of mandamus or certiorari where the effect of quashing the impugned order would be to restore an illegal order. Reference in this respect may have to be made to the decision of the Supreme Court in the case of Venkateswara Rao vs. Govt. of Andhra Pradesh, AIR 1966 SC 828. None of the legal or fundamental right of the petitioner can be said to be infringed in the present case.

6. The counsel for the petitioner lastly contended that this court has protected the petitioner by granting interim relief and the petitioner has been working all these years on the post and as such the petitioner should be allowed to continue on the post. I do not find any substance in this contention of the learned counsel for the petitioner. Merely because this court has granted interim relief to the petitioner at the time of admission of the special civil application it will not make the appointment legal, which was illegal since its inception. The interim relief was granted pending the special civil application and the same is subject to the final result of the litigation. Interim relief would merge in the final relief granted by the court in the petition and in the case of dismissal of the petition the petitioner shall not be entitled to any benefit whatsoever on the basis of interim relief. Of course the court may not pass an order in an appropriate case to realise the amount paid to the petitioner for all these years by way of salary. But merely because interim relief is granted in favour of the petitioner, he cannot be allowed to continue on the post nor his services can be regularised nor his appointment can be made substantive. No equity will come in favour of the petitioner on that basis. In

case the contention of the learned counsel for the petitioner is accepted, then it would amount to acceptance of the special civil application at the stage of grant of interim relief. It is settled law that this court does not decide the rights of the parties finally at the stage of grant of interim relief. It is also settled position that this court does not grant interim relief of the nature of giving final relief to the parties at that stage. The reason is obvious. Otherwise if ultimately the impugned order was not found to be illegal, by interim relief it will attain legality or it will convert into a legal order. It is true that it may be a hard case where this court has protected the petitioner by way of interim relief for all these years and now as the order of termination of services is held to be valid he has to quit the office . But for this hardship this court will not lay down a bad law. If this contention of the learned counsel for the petitioner is accepted, then though the court has held the order of termination of service of the petitioner to be legal, it will be allowing the petitioner to work on the post on the basis of an illegal order, and this court will not create such an anomaly. Hence the last contention of the counsel for the petitioner deserves no acceptance.

7. In the result this special civil application fails and the same is dismissed. Rule discharged. The interim relief granted earlier by this court on 6-9-1983 and continued under order dated 21-11-1983 stands vacated. No order as to costs.

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